

Committee

HB 246

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HB 246

Testimony to House Committee: Local Government

Madam Chair and committee members,

My name is Tom DePuydt (dep-yoo-t); I'm a 3rd generation farmer and rancher from Saco, MT in northern Phillips County.

I come here today on my own behalf in support of HB 246. I feel that I am speaking for many other supporters of private property rights across the state and especially for my kids and the future generations in my area.

I would like to explain the situation that counties, such as Phillips County are presently in.

First, I would refer to Part 2 of MCA 76-6-102. This law suggests that all parts of our state are experiencing "rapid" urban and suburban development. It tries to provide justifications for conservation easements at a statewide level. Yet, not all counties in the state are experiencing growth, let alone "Rapid" growth. Rapid urban or suburban growth is not a problem in our county along with many other counties. Half of the Montana counties lost population between the years 2000 and 2010.¹ This is a case where; one size does not fit all. It is hard to use this justification, at a local level, when 48 % of the land in Phillips County is managed by federal and state agencies.² Add another 2% for lands burdened by conservation easements.³ The population in Phillips County is just over 4,200 on a land area of over 5,000 sq. miles. Over 50% of our county is protected by government agencies, NGO's and other qualified organizations and the percentage is growing. Open spaces have been preserved.

Statewide, over 40% of land is government managed.⁴ In addition 2.1 million plus acres are burdened by Conservation Easements.⁵ The Conservation easement acreage went from Zero to more than 2.1 million acres since the mid 1970's. Never again can our children own these lands completely, a choice we have but our children won't.

Now I have some examples of questionable practices of Conservation Easements recorded in Phillips County that other counties may have experienced.

You may have heard of the American Prairie Foundation (APF) and their plans to build a wildlife preserve a million acres larger than Yellowstone Park. Their goal is to restore and conserve native prairie lands in Northeastern Montana through public-private partnerships.⁶

¹ ceic.mt.gov

² Phillips County Growth Policy

³ MTNHP, PC clerk & recorder

⁴ http://nris.mt.gov/montanafacts/county_own.asp

⁵ MTNHP

⁶ IRS Form 990, APF, 2009, 2010

[illegible]

In the last year or so ago the APF conveyed at least one conservation easement to the Montana Land Reliance (MLR).

On this recorded easement along with at least one other easement, "Recitals" are listed in the opening page of the document. (The definition of "Recital" from Black's Law Dictionary 9th edition; "A preliminary statement in a contract or deed explaining the reasons for entering into it or the background of the transaction, or showing the existence of particular facts")

Recitals lines 5 & 6;

5. "The Phillips County Commissioners have expressly recognized in the Phillips County Growth Policy, dated 2006 through 2011, the importance of preserving open space and agricultural lands in Phillips County, Montana, as a result of rapid urban and suburban development of formerly rural lands; and,

6. "The Phillips County Growth Policy specifically encourages use of conservation easements to preserve open space and agricultural lands in the area; and,"⁷

Those 2 Recitals are simply false. I cannot find where the PC growth policy states the importance of preserving open space and we surely do not have any "rapid" urban and suburban development. The PC Growth Policy also does not specifically encourage the use of conservation easements.

If lines 5 and 6 were factual recitals from the Montana Land Reliance, why would they violate the preservation of open space, by creating suburban development in the document itself?

The following is some of which is allowed in this particular easement;

It allows the construction of up to 8 residences, 2 of which can be dormitories. It includes an option to build an additional residential area at a later date.

Construction of campgrounds & Yurt grounds with utilities, Retail sales area, Communication Facilities, Billboards, other structures and the list goes on.

It doesn't seem right that an organization using public partnerships, whose non-profit goals are to conserve lands, then convey an easement to another non-profit, to conserve the same land through a perpetual conservation easement. Then, (I assume) using public funds, actually develop the property that is to be protected, with no oversight or transparency to the public.

⁷ PC doc. Bk. 50:748

As a private individual, my private property rights are continually being threatened. Several years ago, I found my farm and ranch encircled within a map produced by the World Wildlife Fund. Along with the map were documents from the Department of Interior, suggesting plans that include a National Monument. Since then my property has been included within conservation area maps of The Nature Conservancy and others. It is hard to keep up with the NGO's, government land use plans, private-public partnerships and other government agencies in their regional planning processes. It seems everyone has a plan for us.

I hope and pray that I can have a voice in those plans and that my rights will be protected even though we are greatly outnumbered by those who want to entice, take or weaken our private property rights.

These plans are increasingly less transparent. In the case of conservation easements, much of the inner workings are hidden from the public, even though public funds are often used. Conservation Easements are generally pre-acquisition agreements. The practice of pre-acquisition agreements generates direct monetary benefits to the land trust involved.⁸ "Transactions such as these have played a growing role in the spread of land trusts, but also mean that acreage held by a land trust is no longer always an accurate measure of its activities."⁹ (TNC example easement, doc. Bk 3 pg. 564, acreages) It is important for county planners to know accurate acreages.

Currently Federal Agencies are exempt from submitting easements to local planning authorities. I encourage you to ensure this legislation includes easements of Federal Agencies. With this legislation, counties will have the option if they so desire, to create growth policies and land use plans that fit the needs and concerns of the local area residents, with the input of the local residents. A growth policy is the closest thing we have to a plan for ourselves.

As private property rights continue to diminish now and in the next generation, when can local citizens and their local elected officials, step in to a position to protect the private property rights that remain?

The conservation and protection of private lands doesn't require a person to give up property rights, and it certainly does not require an easement. When our property rights are taken or when we give them away, our local economy will suffer and our way of life will change forever.

Madam Chair and committee members, I ask you to support this bill HB246 and I thank you time and your consideration.

⁸ *Land Trusts: The Growth of the Non-Profit Land Conservancy Movement*. Sean Mulholland, John E. Walker Department of Economics Clemson University & PERC

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